IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6838 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAILALBHAI T PATEL

Versus

ELECTRICAL INSPECTOR

Appearance:

1. Special Civil Application No. 6838 of 2004

MR PREMAL R JOSHI for Petitioner No. 1

MR KL PANDYA AGP PLEADER for Respondent No. 1

MR KB PUJARA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/07/2004

ORAL JUDGEMENT

1. Rule. Mr. K.L. Pandya, learned A.G.P. appears and waives service of notice of Rule on behalf of the respondent no. 1. Mr. K.B. Pujara, learned advocate also waives service of notice on behalf of the respondent No.2. Upon request of the learned advocate appearing for parties, the matter is taken up for final hearing today.

2. The present petition is preferred under Article 226 of the Constitution of India, whereby the petitioner has challenged the communications dated 22-4-2003 and 26-5-2004 which are produced at Annexure-B and Annexure-A respectively with the memo of the petition.

3. Learned advocate appearing for the petitioner mainly submitted that the meter of electricity consumption has been installed at the factory premises of the petitioner by the respondent Ahmedabad Electricity Company (hereinafter referred to as the "respondent Company") with effect from 4-7-2001. The said meter was changed because of demand of the petitioner for higher load of electricity. Initially, it was for 12 H.P. and subsequently demand was made by the petitioner for additional 48 H.P. and hence the meter was changed by the respondent Company on 4-7-2001 and New meter bearing No. 9919402 was installed. He has also submitted that on 22-4-2003 the petitioner received communication from the respondent that new meter bearing No.9919402 is having multiplying factor - 3 (three) and it was originally Multiplying Factor - 1 (one) in the old meter. But due to inadvertence the bill has been raised by the respondents by applying Multiplying Factor - 1 (one) till the date of bill of reading upto 22-4-2003. Therefore, vide communication dated 22-4-2003 it was informed by the respondents to the petitioner that a Debit Note for 1,39,836 units for the period from 4-7-2001 to15-3-2003 amounting to Rs.5,85,3876-32 will be reflected in the next Energy Bill of the petitioner. In pursuance of the said communication, the petitioner preferred application u/s 26 (6) of the Electricity Act, 1910 before the Electrical Inspector but the Electrical Inspector has not decided the said application and informed the petitioner vide communication dated 26-5-2004 to the effect that similar and identical Special Civil Applications No.14452 of 2003 and 13549 of 2003 are pending before this Court. Therefore, the application preferred by the petitioner under Section 26(6) of the Indian Electricity Act, 1910 (hereinafter referred as "the Act") has not been decided. It is also contended by the learned advocate for the petitioner that the respondent authority has changed multiplying factor unilaterally without affording any

opportunity of being heard to the petitioner and hence the communication dated and 22-4-2003 is violative of Articles 14 of the Constitution of India and hence the same deserves to be quashed and set aside.

4. It is also contended by the learned advocate for the petitioner that the Electrical Inspector has power, jurisdiction and authority u/s 26 (6) of the Act to hear and decide the application of the petitioner raising the question as to multiplying factor of the meter of the petitioner. He has also submitted that there is inaction on the part of the Electrical Inspector and it was the duty of the Electrical Inspector to hear and decide the application preferred by the petitioner and therefore the communication dated 26-5-2004 deserves to be quashed and set aside and the Electrical Inspector should be directed to hear and decide the aforesaid application of the petitioner.

5. Upon issuance of the notice by this Court, respondent No. 2 has appeared through the learned advocate Mr. K.B. Pujara. He has submitted that what is the multiplying factor of meter of the petitioner cannot be decided by the Electrical Inspector and is de-hors the power, jurisdiction and authority which has been conferred upon the Electrical Inspector under Section 26 (6) of the Act. The multiplying factor of the meter is to be seen and read from the meter itself. In the present case, there is neither error nor defect nor any fault in the meter and therefore the Electrical Inspector has no power, jurisdiction and authority to decide the application u/s 26) of the Act. It is only when the meter is correct or not, the Electrical Inspector has power to decide the application u/s 26(6) of the Act, 1910.

6. Learned advocate for the respondents has also submitted that there is a simple mistake on the part of the respondent - Company in applying wrong multiplying factor. The old meter was having Multiplying Factor-1 (one), whereas the new meter was having Multiplying Factor-3 (three) which has been installed (upon the demand of the petitioner) for high power connection. Originally, it was connection of 12 H.P. Whereas as per the new demand for 60 H.P. meter was required. The new meter was having, in fact, multiplying factor - 3 (three). Every meter has its own multiplying factor. The meter is to be seen and properly read by the concerned officer of the respondent authority. But in the present case, due to inadvertence the bills were raised by applying Multiplying Factor-1 (one). The fact

of inadvertence has also been admitted by the respondent Company vide their letter dated 22-4-2003. Thus, there is no error of fault in the meter but there is error on the part of the respondent authority in applying Multiplying Factor. Instead of Multiplying Factor-3 (three) wrongly Multiplying Factor-1 was taken into consideration while preparing the bill and hence the bills of lower units and lower amount was raised from 4-7-2001 and therefore it was informed by the respondents to the petitioner vide communication dated 22-4-2003 that in the next energy bill Debit Note for 1,39,836 units amounting to Rs.5,85,387-32 will be reflected. This communication dated 22-4-2003 is absolutely legal and in consonance with the facts and law.

7. Learned advocate for the respondents has also relied upon the decisions of the Bombay High Court in the case U.A. Thadani and Another Vs. B.E.S.T. Undertaking and another, reported in of AIR 2000 Bombay 264 and in the case of M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. reported in AIR 1978 Bombay 369.

8. I have perused the papers and the affidavit-in-reply filed by the respondent no. 2. It is worthwhile to note the provisions of Section 26 (6) of the Indian Electricity Act, 1910, which read as under :

"26 (6) : Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the matter shall not, in the opinion of such Inspector, have been correct, but save, as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention to do so."

9. From the aforesaid provisions of the Act, it is clear that the Electrical Inspector has power,

jurisdiction and authority to decide the application of the petitioner only when there is dispute as to any meter referred to in sub-section (1) of Section 26 is correct or not. If such dispute is raised by the petitioner as to correctness of the meter, then only the Electrical Inspector has power, jurisdiction and authority to decide the said dispute. In the present case, the dispute raised by the petitioner is not pertaining to the correctness of the meter. There is no technical defect or fault in the meter. The dispute as to correctness of the meter may be for the fact that the meter is running slow or fast or for the fact that the meter is not noting the reading of the units of electricity consumption or may be for the fact that the meter is so defective that it reflects not the exact consumption of electricity energy. If such type of disputes are raised then the same may be termed as the dispute as to correctness of the meter. The aforesaid list of illustrations is not exhaustive. In the present case, such type of disputes are not in existence. The dispute of the present petitioner so far as the new meter is concerned, is pertaining to Multiplying Factor. Instead of Multiplying Factor-3, Multiplying Factor-1 was wrongly applied by the respondent authority.

10. It is to be noted here that the old meter of the petitioner was having Multiplying Factor-1 (one) which was installed for 12 H.P. electricity connection. Subsequently, the demand was made by the petitioner for additional 48 H.P. Therefore, new meter was replaced in place of old meter for 60 H.P.(12 H.P. + 48 H.P.) and the new meter was having Multiplying Factor-3 (three). The Multiplying Factor has to be read from the print regarding multiplying factor as printed on the meter itself. The meter is to be seen and read carefully and properly. In short, Multiplying Factor is reflected on the meter itself. Every meter has its own Multiplying Factor and while calculating and computing the consumption of unit and while preparing the electricity bill Multiplying Factor printed on the meter is required to be taken into consideration and properly applied and accordingly the bills for consumption of electricity energy has to be raised in accordance with Multiplying Factor by the respondent authority. If there is any error on the part of the respondent authority, the same can be rectified. It is a simple error and not a matter which is required to be adjudicated upon or to be decided. It is a simple mathematical calculation, afresh to be done by the respondent authority, as and when such error is committed by the respondent authority.

11. In fact, the respondent authority has wrongly applied Multiplying Factor-1 which was connected with the old meter installed on 4-7-2001. Factually, the new meter was having Multiplying Factor-3 was installed at the factory premises of the petitioner. Therefore, the calculation made by the respondent authority on the basis of Multiplying Factor-1 on and from 4-7-2001 was mistaken, erroneous and incorrect due to mistake, error or inadvertence or at highest, it may be due to negligence. None the less, the fact remains that the new meter was having Multiplying Factor-3 (three) but the calculation was made by applying Multiplying Factor-1 and therefore less number of units of electricity consumption was shown and consequently the bill for lesser amount was given to the petitioner by the respondent authority. The aforesaid mistake was detected by the respondent authority and it is admitted by the respondent authority vide communication dated 22-4-2003 that due to inadvertence the incorrect bill has been raised for the period running from 4-7-2001 to 15-3-2003 by applying, wrongly, Multiplying Factor-1 and therefore in the next energy bill debit note will be reflected on the basis of the calculation of electricity consumption for the aforesaid period by applying Multiplying Factor-3 (three). In my considered opinion, there is no error in the said communication issued by the respondent authority but the same is absolutely just, proper and in consonance with law and facts. Therefore, there is no substance in the arguments canvased by the learned advocate for the petitioner that the respondent cannot raise bill for electricity consumption by applying Multiplying Factor-3.

12. So far as the second contention of the learned advocate for the petitioner as to whether the Electrical Inspector has power, jurisdiction or authority to decide the application of the petitioner made u/s 26 (6) of the Act is concerned, as referred to hereinabove, the provisions are explicitly clear and unambiguous. When there is dispute or defect as to correctness of the meter and the application u/s 26 (6) of the Act before is made to the Electrical Inspector, the Electrical Inspector has power to decide such application. The Electrical Inspector u/s 26 (6) of the Act, 1910 is concerned with correctness of the meter and not with the correctness of reading of the meter by meter reader. In the present case, in correct and proper meter, there is error in reading of the meter and applying Multiplying Factor by the respondent authority. Multiplying Factor varies from meter to meter. It depends upon capacity and mechanism of the meter which is being reflected on the meter itself. Error or mistake in reading of Factor is

reflected in the calculation of units of electric energy and that results into an error in arriving at amount of electricity bill in terms of rupee. When there is an error or mistake regarding application of Multiplying Factor, the same can be rectified. In the present case, there is merely an error of application of Multiplying Factor. The error of calculation of units and calculation of amount of electricity energy are mathematical and clerical in nature and hence the Electrical Inspector has no power, jurisdiction or authority to decide the application of the petitioner u/s 26 (6) of the Act. In the present case in my opinion, there is no error as to correctness of the meter of the petitioner but there is mistake or error or inadvertence or at the highest negligence in applying the correct Multiplying Factor on the part of the respondent authority. Multiplying Factor is always attached to and printed on the meter which can be seen and read on the meter itself. Such type of erroneous and incorrect reading of the meter cannot be a subject matter of adjudication u/s 26 (6) of the Act. The view taken by the Hon'ble Bombay High Court in the case of U.A. Thadani and Another Vs. B.E.S.T. Undertaking and another, reported in of AIR 2000 Bombay 264 particularly in paragraphs no. 7, 8 and 9. 264. Relevant paragraphs thereof read as under under :

"7.... In the present case it was human error inasmuch as while raising the bills for energy consumed, the reading which was shown on the meter was not multiplied by multiplying which was essential to arrive the actual electricity consumed. For finding the consumption of electricity by petitioners, reading shown in the meter was required to be multiplied by multiplying factor of 40 but for the period from 26-11-1991 to 6-5-1994 while raising the bills, the meter reading was not multiplied by multiplying factor resulting into error and that has been sought to be corrected by the respondents by issuing debit notes. It cannot be said by any stretch of imagination that the amount claimed by respondents by way of debit notes is not the amount due since the petitioners consumed the electricity but they were under billed by not multiplying the reading shown in meter by multiplying factor. In this view of the matter, six months restriction imposition in Section 26 of the Electricity Act, 1910 has no application..."

"8. In M/s. Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd.Vs. The Municipal Corporation of Greater Bombay, AIR 1978 Bom. 369, the Division Bench of this Court in paragraph 15 of the report held thus at page 376:-

"15. Before dealing with the second submission we may dispose of the argument based on the provisions contained in S.26 based on the provisions contained in S.26 which might seem to have a bearing both on the words due and 'neglects to pay'. It was submitted that the provisions contained in S.26 make it abundantly clear that a claim can be made by the licensee or by the consumer only in respect of the dues for the six months prior to the date of the claim and not for any period prior thereto. This appears to us to be based on a misreading of the provisions contained in S.26. If either the licensee or the consumer disputes the correctness of the meter, then it is true that S.26 enables the dispute to be resolved by the Electrical Inspector but such right of correction is restricted to a period of six months. But that can have no bearing on the claim made by the licensee in the matter before us. Very briefly stated, the learned trial Judge rejected the argument on the simple basis that additional amounts for the eleven-year period were claimed not on the basis of failure to multiply the reading by 2 (two), which was an entirely different thing. That were was such a mistake was contended by the licensee and the Electrical Inspector (on a reference by the Court) held that the reading of the meter was required to be doubled in order to show the real consumption. Under S.26 of the Electricity Act the restriction as to six months period does not seem to apply to such claim made by the licensee."

"9. The aforesaid ratio clearly applies to the facts and circumstances of the present case and I have no hesitation in holding that the restriction as to six months period provided in Section 26 of the Electricity Act has no application to a demand made by the license or the Electricity Board or undertaking for the unpaid amount for the electricity consumed if the consumer was underbilled due to clerical mistake or human error or such like mistake."

13. Similarly, the same view is taken by the Bombay High Court in the case of M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. reported in AIR 1978 Bombay 369, particularly paragraph no. 15 thereof, which reads as under :

> "15. Before dealing with the second submission we may dispose of the argument based on the provisions contained in S. 26 which might seem to have a bearing both on the words 'due' and 'neglects to pay'. It was submitted that the provisions contained in S. 26 make it abundantly clear that a claim can be made by the licensee or by the consumer only in respect of the dues for the six months prior to the date of the claim and not for any period prior thereto. This appears to us to be based on a misreading of the provisions contained in S.26. If either the licensee or the consumer disputes the correctness of the meter, then it is true that S.26 enables the dispute to be resolved by the Electrical Inspector but such right of correction is restricted to a period of six months. But that can have no bearing on the claim made by the licensee in the matter before us. Very briefly stated, the learned trial Judge rejected the argument on the simple basis that additional amounts for the eleven-year period were claimed not on the basis of failure to multiply the reading by 2 (two), which was an entirely different thing. that were was such a mistake was contended by the licensee and the Electrical Inspector (on a reference by the Court) held that the reading of the meter was required to be doubled in order to show the real consumption. Under S.26 of the Electricity Act the restriction as to six months period does not seem to apply to such claim made by the licensee."

14. The aforesaid views expressed by the Bombay High Court are absolutely applicable in the present case. In the present case, the whole dispute is based on misreading of the meter. If proper and adequate care would have taken by the respondent authority, correct and proper Multiplier Factor would have been applied and consequently correct units of electricity consumption could have been reflected in the bill. But due to mistake, error or inadvertence or at the highest negligence, the respondent authority has issued bill on the basis of Multiplying Factor of old meter for the

period running from 4-7-2001 to 15-3-2003 and therefore consequently lesser number of units of electricity consumption was reflected in the electricity bills. Subsequently, upon realisation of the said mistake, vide communication dated 22-4-2003 the respondent authority informed the petitioner that a debit note has been raised by applying Multiplying Factor-3 (three) instead of Multiplying Factor-1 (one) and on the basis of the same calculation has been arrived at by the respondent authority and therefore the amount of Rs.5,85,387-32 was to be reflected in next electricity energy bill of the petitioner. The respondents have right to correct and rectify the mistake or calculation and to raise correct bill. The Electrical Inspector has no power, jurisdiction or authority to decide the application u/s 26 (6) of the Act in the present case, as there is no dispute as to correctness of the meter of the petitioner.

15. In view of the foregoing reasons, this petition has no substance and the same fails. Accordingly, the present petition is dismissed. Rule is discharged with no order as to costs.

16. At this stage, learned advocate for the petitioner submitted that such type of error or inadvertence on the part of the respondent authority is admitted by the respondent vide their communication dated 22-4-2003 and because of their negligence and inadvertence the bills has been raised by way of Debit Note for Rs.5,85,387-32. Therefore, in the interest of justice some instalments may be given to the petitioner so as to enable him to deposit the same with the respondent authority. Looking to the facts and circumstances of the case, the petitioner may make an application to the respondent authority for giving instalment of bill of Rs.5,85,387-32. This Court hopes and trust that in case the petitioner prefers such application to the respondent authority, the same shall be considered sympathetically by the respondent with a view to accommodate the petitioner to deposit the amount of Rs.5,85,387-32 with the respondent authority.

(D.N. Patel, J.)

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